

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

BRETT THOMAS GREEN,

Case No. 14-CV-0858 (ADM/SER)

Plaintiff,

v.

REPORT AND RECOMMENDATION

FARIBAULT MCF NURSE; C.O. IN THE  
INCIDENT; HEARING OFFICER; and  
WARDEN OF FARIBAULT MCF, in their  
individual capacities,

Defendants.

---

Plaintiff Brett Thomas Green — a prisoner at the Minnesota Correctional Facility at Rush City, Minnesota — seeks relief under 42 U.S.C. § 1983. Green submitted an application to proceed *in forma pauperis* (“IFP”) in this lawsuit. 28 U.S.C. § 1915(b)(1) requires prisoner IFP applicants to pay an initial partial filing fee at the outset of the case. In an order dated May 8, 2014, this Court calculated Green’s initial filing fee as \$4.29 and ordered Green to pay that amount by no later than 20 days of the date of that order. Green was also warned that failure to pay the initial partial filing fee would result in a recommendation that this case be dismissed without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute.

The deadline set in the May 8 order has now passed. Green has not paid the filing fee, and he has not offered any explanation for his failure to do so. Accordingly, it is now recommended — in accordance with the Court’s prior order in this case — that Green be deemed to have abandoned this action and that this case be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule

41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

#### RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED THAT this action be DISMISSED WITHOUT PREJUDICE for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

Dated: September 4, 2014

s/Steven E Rau  
Steven E. Rau  
U.S. Magistrate Judge

#### NOTICE

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **September 19, 2014**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within fourteen days after service thereof. All briefs filed under this rule shall be limited to 3500 words. A district judge shall make a de novo determination of those portions of the Report to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Circuit Court of Appeals.